



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

April 29, 1952

Hon. Robert S. Calvert
Comptroller of Public Accounts
Austin, Texas

Opinion No. V-1442.

Re: Status of administrative fund established by the Social Security Act passed by the 52nd Legislature.

Dear Sir:

You have requested the opinion of this office on the following questions:

"1. Does the second paragraph of Section 12 of House Bill No. 603, Regular Session of the Fifty-second Legislature, create a special fund in the state treasury?

"2. The last sentence in Section 12 reads: 'These funds will not be State funds and will not be subject to legislative appropriation.' Is this a valid provision?

"3. If you should answer question number 2 in the negative, then does Section 13 of House Bill No. 603, Acts of the Regular Session of the Fifty-second Legislature, appropriate the monies collected under the provisions of the Act to the Social Security Administrative Fund?"

House Bill 603, Acts 52nd Leg., R.S. 1951, ch. 500, p. 1480, title "Social Security - County and Municipal Employees," (Article 695g, V.C.S.) was passed for the purpose of allowing county and municipal employees to participate in the Federal Social Security program. Under the federal act only the State, and not individual counties and municipalities, may enter into social security agreements with the Federal Agency. In order to comply with the requirements of the Federal Social Security Act the State Department of Public Welfare was designated

as the State agency to administer this act on behalf of the participants. This office held House Bill 603 constitutional against a contention that the payments required by the participating counties or municipalities were gifts or grants of public money in violation of the Constitution. Att'y Gen. Op. V-1198 (1951). The specific questions now before us were not involved in that opinion and hence were not considered.

The provisions of House Bill 603 which give rise to your questions are the following:

"Sec. 10. The respective governing bodies of the various counties or municipalities of this State which enter into agreements under this program are hereby authorized to pay to the State Agency, out of any available funds not otherwise dedicated, such amounts, separate and apart from employees' contributions and matching contributions, as may be agreed between the respective governing body and the State Agency to be necessary to finance the county's or municipality's proportionate share in the administrative cost of this program at the State level. The State Agency shall require specific undertakings to defray a proportionate share of the administrative expenses at the State level in agreements negotiated with counties and municipalities on any basis mutually agreeable between the State Agency and the participating county or municipality, whether as an annual fee for each participating county or municipality, an annual fee per employee covered, a percentage based upon the contributions to the Federal authorities, or any other equitable measure. Annually at the close of each fiscal year, the State Agency shall pay from the Social Security Administration Fund to the State Treasurer for deposit to the General Revenue Fund of the State of Texas an amount not less than ten per cent (10%) of these contributions during the preceding year to defray administrative expenses until such time as the amount appropriated to the State Agency from funds of the State for administrative purposes has been reimbursed in full, at which time such payments shall cease.

"Sec. 12. . . . The State Agency shall deposit all moneys collected under the provisions of this Act from participating counties and municipalities to defray the cost of administering this program at the State level in a special fund to be known as the Social Security Administration Fund. The State Treasurer shall be treasurer and custodian of the fund, which shall be held separate and apart from all public moneys or funds of this State. The State Treasurer shall administer this fund in accordance with the directions of the State Agency. Moneys deposited in either of these special funds shall be disbursed upon warrants issued by the Comptroller of Public Accounts pursuant to sworn vouchers executed by the State Agency acting through the executive director of personnel of the agency to whom he expressly delegates this function. These funds will not be State funds and will not be subject to legislative appropriation.

"Sec. 13. The State Agency is authorized to expend moneys in the Social Security Administration Fund for any purpose necessary to carry on the administration of this program at the State level, including but not limited to salaries, traveling expenses, printing, stationery, supplies, equipment, bond premiums, postage, communications, and contingencies, and the State Agency is authorized to employ such personnel, purchase such equipment, incur such expenses as may be necessary to carry out the administration of this program at the State level, provided all salaries and expenditures from this fund shall be consistent with the letter and spirit of comparable items and general provisions in the general departmental appropriation bill then current. (Emphasis added.)

The main question for decision concerns the validity of the above provisions in House Bill 603 relating to the safe-keeping and handling of the administrative fund. In this regard, the Supreme Court has said:

" . . . It is academic to say the Legislature has the power to pass any law which its wisdom suggests that is not forbidden by some provisions of the Constitution. . . ." Byrd v. City of Dallas, 118 Tex. 28, 6 S.W.2d 738, 740 (1928).

The constitutional provision drawn into controversy in answering your questions is Section 6 of Article VIII, which provides:

"No money shall be drawn from the Treasury but in pursuance of specific appropriations made by law; nor shall any appropriation of money be made for a longer term than two years, except by the first Legislature to assemble under this Constitution, which may make the necessary appropriations to carry on the government until the assemblage of the sixteenth Legislature."

The case of Friedman v. American Surety Co. of New York, 137 Tex. 149, 151 S.W.2d 570 (1941), held that the trust fund established by the required contributions of employees and employers under the Unemployment Compensation Act was not a state fund and hence was not in the Treasury subject to appropriation by the Legislature, although the trust fund was held by the Treasurer. The Friedman case, however, dealt only with the main trust fund, and not the administrative fund which is the fund giving rise to the problems before us.

In order to answer your questions it is necessary to analyze the Social Security Act passed by the Fifty-second Legislature. Under the provisions of this act, counties and municipalities enter into Social Security agreements with the State Agency on a voluntary basis. The whole plan is based upon contracts between the State Agency and the participating counties and municipalities. One of the contractual agreements is to the effect that the State Agency will administer the act on behalf of the participants, but at their expense. The participants each agree to share a pro rata part of the expenses of administration and in return the State Agency acts as the liaison body between the participants and the Federal Agency. The State Agency has been given the authority necessary to comply with Federal requirements, but by contract all the counties and municipalities

participating in the plan share the administrative expenses.

We think it is clear that the money contributed by the participants and held by the State Agency to defray administrative expenses never becomes "State funds" in the sense that they could be placed in general revenue and appropriated by the Legislature. These funds remain county and municipal property and the State Agency holds them as trustee until they are expended, since the participants have contracted to bear the administrative expense. If an excess were to be established in this trust fund, the Legislature could not appropriate it for any other use. Such an act by the Legislature would violate the portion of Section 16 of Article I of the Texas Constitution relating to impairing the obligation of contracts. Johnson v. Smith, 112 Tex. 222, 246 S.W. 1013 (1922).

In light of the above analysis, you are advised that the administrative funds are not State funds, and therefore are not subject to appropriation. The special trust fund is not placed in the State Treasury, but by statute the Treasurer is made custodian of the fund. Undoubtedly the Legislature may place such an added duty upon the Treasurer. Manion v. Lockhart, 131 Tex. 175, 114 S.W.2d 216 (1938).

SUMMARY

The administrative trust fund established under the provisions of the Social Security Act (H.B. 603, Acts 52nd Leg., R.S. 1951, ch. 500, p. 1480) is a fund provided, pursuant to contract, by the participating counties and municipalities. The trust fund is not a state fund and is therefore not subject to appropriation by the Legislature. The fund is not placed in the State Treasury, but the Legislature has merely made the Treasurer custodian of it.

APPROVED:

Yours very truly,

C. K. Richards
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